IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 2165 of 2000

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

VIJAYKUMAR I PATEL - Petitioner(s)
Versus
CHIEF OFFICER - Respondent(s)

==========

Appearance :
MR PH PATHAK for Petitioner(s) : 1,
MS NIYATI K SHAH for Respondent(s) : 1,

==========

CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 26/06/2007

ORAL JUDGMENT

1. Mr.P.H. Pathak, learned counsel for the petitioner and Mr.Niyati Shah, learned counsel for the respondent.
2. The petitioner, being aggrieved by the impugned Award made by the learned Labour Court, is before this Court

with a submission that appointment of Mr.K.Y. Acharya is patently illegal and the appointment is in the teeth of the earlier order dtd.25/8/1989 passed by this Court in Special Civil Application No.2907 of 1989.

3. Short facts necessary for disposal of the present writ application are that the post of Sanitary Inspector in the management of the respondent - Kadi Nagar Palika, Kadi is reserved for a person belonging to Scheduled Tribe. Before any person could be appointed on the regular basis, on 26/2/1989, the petitioner was appointed on temporary basis with a further stipulation that the appointment shall be till the post is filled up by regular appointment. On 21/4/1989, even before the regular appointment, the respondent proposed to remove the petitioner from service, therefore, the petitioner came to this Court in Special Civil Application No. 2907 of 1987. The mater was finally disposed of on 25/8/1989 with a direction that the petitioner would be entitled to hold the post till Sanitary Inspector is appointed on basis of advertisement. Though there is some argument from the side of the respondent that the High Court did not say that the petitioner can continue till regular appointment is made, but true spirit of the order dtd.25/8/1989 clearly

shows that the High Court was alive to the fact that the Municipality had issued public advertisement calling for the applications from eligible persons for the post of Sanitary Inspector and the Municipality was likely to fill that post in near future. The Court directed that the petitioner cannot escape his consequential removal nor can he assert any right to continue, if the appointment of another person is made to the post of Sanitary Inspector. In the opinion of this Court, the word 'appointment' would mean an appointment made on the basis of the advertisement and not otherwise. On 11/9/1989, the petitioner resumed the services and worked upto 30/9/1991, his services were terminated and one Mr.K.Y. Acharya, was appointed on the post. Being aggrieved by the ill-action on the part of the Municipality, the petitioner sought a Reference, which was accordingly made and was registered as Reference (LCK) No.144 of 1992. After recording evidence and hearing the parties, the learned Labour Court rejected the Reference on 19/5/1995.

4. Mr.Pathak, learned counsel for the petitioner submits that the appointment of Mr.K.Y. Acharya is in the teeth of the earlier order of the High Court and it would not be proper on the part of the respondent Municipality to say that the

post was de-reserved and the appointment was made. His further submission is that the post was not available as a promotional avenue but was to be filled by direct appointment. His submission is that if no Scheduled Tribe candidate was available and the post was de-reserved (as alleged by the respondent), then too, the post was to be filled through advertisement and direct appointment. He submits that Mr.K.Y. Acharya could not be appointed to the office of Sanitary Inspector.

5. Ms.Niyati K. Shah, learned counsel for the respondent Municipality though firstly submitted that the Award made by the learned Labour Court is perfectly justified, but being confronted with the legal position, submits that the questions proposed to be raised before this Court though are pure questions of law but were not pressed before the learned Labour Court. Not only that, Mr.K.Y. Achayra, who is to be adversely affected, if an oder is made in favour of the petitioner, was not joined as a party respondent before the Labour Court. She submits that to do complete justice between the parties, the matter may be remanded back to the learned Labour Court with a liberty to the present petitioner to join Mr.K.Y. Achayra as party respondent and then give fresh opportunity to the

parties to lead evidence and decide the questions afresh.

6. Mr.Pathak, learned counsel for the petitioner readily accepted the submissions made by Ms. Shah.

7. In view of he submissions made by the parties, the impugned Award made by the learned Labour Court is quashed and set aside and the matter is remanded back to the Labour Court. The parties present in the Court shall appear before the learned Labour Court on 30/3/2007. The petitioner shall be obliged to file a copy of this judgment enabling the learned Labour Court to know as to what the said court is required to do.

8. After appearance of the parties, the petitioner shall make necessary applications for joining Mr.K.Y. Acharya as party respondent. Learned Labour Court shall join Mr.K.Y. Acharya as party respondent and shall issue notices to Mr.K.Y. Acharya. After effecting service of notice, learned court below, if, Mr.Acharya proposes to appear, shall given him an opportunity to file his written statement and shall give further opportunity to the parties to lead further evidence. The Labour Court shall be obliged to decide the question that if the post was not de-reserved, then, could the petitioner be removed from services by yet another temporary appointee and in case, the post was de-

reserved, whether the post could be filled by promotion and whether de-reservation would amount to convert the post from direct appointment to a post to be filled by promotion. The Labour Court shall also take into consideration the earlier order dtd.25/8/1989 made by this Court as understood by this Court. The petition is allowed accordingly. Rule is made absolute to the aforesaid extent. No costs.

(R.S. GARG, J.)

rafik